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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,083	12/02/2003	Barbara Jean Stinnette Watson		2724

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,083

Applicant(s)

WATSON, BARBARA JEAN
STINNETTE

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings were received on 09 December 2005. These drawings are accepted.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGlew et al. US 6,164,824 in view of Freeman US 5,209,573 and in view of Herrington US 4,913,560.

McGlew '824 teaches a plastic garbage bag with an open end contains an elastic cord (14) in a heat-sealed fold of the upper edges at (16) of the sheets.

First, the reference fails to explicitly teach the material from which the bag is formed, only disclosing that is made of plastic.

Freeman '573 teaches it is known to form garbage bags of polyethylene.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag of McGlew '824 of polyethylene, or any other suitable material, as taught to be a known material for forming plastic garbage bags by Freeman '573. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Next, the reference fails to teach the thickness of the bag walls or the size of the sheets of material from which the bag is formed.

Herrington '560 teaches it is known to heat seal the side edges (13) and (14) of two polyethylene sheets in order to form a bag.

It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to form the edges of Barrett '523 by heat sealing, as taught to be a known equivalent manufacturing means by Herrington '560. Furthermore, it would have been obvious to form the bag at least 910 mm wide and 450 mm tall, because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the thickness of the walls of the bag of McGlew '824 to 2.0 mm, or to any other suitable thickness, motivated by strengthening the bag. It has been held that discovering an optimum value of a result-effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Next, the reference fails to teach heat sealing along alternate folds along the bottom.

Freeman '573 teaches it is known to form garbage bags by heat seal along alternate folds of the edges of plastic sheets.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bag of McGlew '824, forming the bottom edge from a heat seal of alternate folds, as taught to be a known equivalent sealing means by Freeman '573. The seam can thus be used as a handle. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Lastly, the reference fails to teach the exact dimensions of the hem through which the elastic cord is placed, and the dimensions of the elastic cord and the cord's elasticity.

It would have been obvious to one having ordinary skill in the art to form the hem to 25 mm, or to any other suitable size. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the elastic cord to 275 mm, with an elasticity of 1020 mm and a diameter of less than 2 mm, or to any other suitable values, motivated by the benefit of providing a suitable elasticity which will enable the bag to securely fit over or within the container onto which it is to be applied since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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Regarding claim 8, the cover is capable of being disposed.

Regarding claims 9-13, because the claims are drawn to a cover *for use with* containers, the references need only meet the claimed structure, and be capable of being used in the intended manner. In the instant case, the bag of Freeman '573 is capable of being used in the intended manner, e.g. a plurality of the covers may be packaged together, it could be used to prevent gases, liquids and solids from entering the associated container, it may be used to cover shrubbery, it could prevent frost from killing shrubbery, and it could be used to cover paintings. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Response to Arguments

4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892 citing relevant references.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

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